

Remarks

Applicant confirms election of Group IV, claims 35 – 43, per the Restriction Requirement and as discussed during the telephonic interview held on September 26, 2007 between the Examiner Stucker and C. Hunter Baker. Claims 1 – 34 are withdrawn as drawn to a non-elected invention. Claims 35 – 43 were pending in the present application before entrance of the present Amendment. Claims 35 – 43 stand rejected. Claim 43 is canceled with this response. New claims 44 – 52 are added in this Amendment. Support for these new claims can be found throughout the specification, but specifically on page 4, in lines 6 – 19 and in original claims 1 – 6, and 15 – 18. Applicant submits that no new matter has been added to the application by these amendments. Applicant reserves the right to prosecute without prejudice in a future application subject matter removed from the claims by the Amendment submitted herewith. Each of the rejections levied in the Office Action is addressed individually below.

Rejection under 35 U.S.C. § 102(e)

Claims 35 – 43 stand rejected as being anticipated by U.S. Patent 6,326,020 to Kohane (“Kohane”). Although the Examiner quoted 35 U.S.C. § 102(b) in the Office Action, he then stated that claims 35 – 43 are rejected under § 102(e). Applicant submits that § 102(e) is the applicable statute. Kohane did not issue as a patent more than one year before the filing of the present application and was not published prior to issuance. Therefore, Kohane is not available as prior art under § 102(b). Applicant requests that the Examiner confirm this.

The Examiner maintains that Kohane teaches the claimed invention of claims 35 – 43. In order to remove Kohane from consideration by the Examiner, Applicant has submitted a Declaration under 37 C.F.R. 1.132 by Dr. Daniel S. Kohane establishing that the claimed invention was not invented by another. Applicant requests that the rejection be removed since the material disclosed in Kohane was not invented by another and, therefore, Kohane is not prior art under § 102(e) to the present application.

Rejections 35 U.S.C. § 103(a)

Claims 35 – 43 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Kohane and U.S. Publication Number 2002/0010194 to Levin (“Levin”). Claims 35 – 43 also stand rejected under 35 U.S.C. 103(a) as obvious in light of Kohane and U.S. Publication Number

2001/0002404 to Webb ("Webb"). Kohane, has been removed from consideration by the Examiner as evidenced by the attached Declaration, as set forth above. Therefore, Kohane cannot be considered as part of the basis for an obviousness rejection. The remaining references, alone without Kohane, do not render the present application obvious.

Double Patenting

Claim 43 stands rejected under the doctrine of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 8 of Kohane. Claim 43 is cancelled rendering this rejection moot.

Applicant thanks the Examiner for her time and consideration. If a telephone conversation would help clarify any issues or help expedite the prosecution of the case, Applicant invites the Examiner to contact the undersigned at 617-248-5222. Please charge any fees associated with this filing, or apply any credits, to our Deposit Account No. 03-1721.

Respectfully submitted,

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